



**STATE OF NEW JERSEY**

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

In the Matter of K.W., Correction  
Officer Recruit (S9988T), Department  
of Corrections

CSC Docket No. 2017-2918

Medical Review Panel Appeal

**ISSUED:**

(BS)

K.W., represented by Robert K. Chewning, Esq., appeals his rejection as a Correction Officer Recruit candidate by the Department of Corrections and its request to remove his name from the eligible list for Correction Officer Recruit (S9988T) on the basis of psychological unfitness to perform effectively the duties of the position.

This appeal was brought before the Medical Review Panel (Panel) on December 15, 2017, which rendered the attached report and recommendation on December 29, 2017. Exceptions were filed on behalf of the appointing authority and cross exceptions on behalf of the appellant.

The report by the Medical Review Panel discusses all submitted evaluations. Dr. Guillermo Gallegos, a psychologist with the Institute of Forensic Psychology (IFP) and evaluator on behalf of the appointing authority, conducted a psychological evaluation of the appellant and noted the appellant had a history of arrests, a termination, and involvement in a 2005 road rage incident. Dr. Gallegos did not recommend the appellant for appointment. Dr. John Aylward, evaluator on behalf of the appellant, carried out a psychological evaluation and evaluated the behavioral record. Dr. Aylward concluded that the appellant was viewed as “adequate” for the position and, therefore, psychologically fit.

The evaluators on behalf of the appellant and the appointing authority reached differing conclusions and recommendations. The Panel concluded that the negative recommendation finds support in the appellant’s history of three arrests, termination from employment, being prescribed Alprazolam, having several motor

vehicle summonses and “smoking weed.” The Panel reviewed each area of concern with the appellant and he satisfactorily answered all of the Panel’s questions regarding these issues. In reviewing the appellant’s behavioral record, the Panel did note concerns about some instances of poor judgment in the past. However, given the appellant’s overall behavioral record, the Panel found there was not sufficient current evidence to support the concerns raised by the appointing authority. The Panel noted that the appellant had maintained a consistent employment record and that there was no evidence of a significant mental health disorder or any evidence of a substance abuse problem. Therefore, taking into consideration Dr. Gallegos’ psychological evaluation, Dr. Aylward’s psychological evaluation, and the appellant’s presentation at the Panel meeting, the Panel concluded that the test results and procedures and the behavioral record, when viewed in light of the Job Specification for Correction Officer Recruit, indicate that the candidate is psychologically fit to perform effectively the duties of the position sought, and therefore, the Panel recommended that the appellant be restored to the eligible list.

In its exceptions, the appointing authority submits a rebuttal to the Panel’s report and recommendation authored by Dr. Matthew Guller, who did not initially evaluate the appellant on behalf of the appointing authority, but like Dr. Gallegos, is with IFP. Dr. Guller asserts that the Panel “did not properly weigh the evidence or credibility” of the appellant. Further, Dr. Guller indicated that the Panel was not aware of additional information which the appellant omitted during the hearing (2015 summons for bulk waste and guilty disposition on a letting his dog run loose charge). Dr. Guller contends that, in view of the recent charges filed against Correction Officers at the Edna Mahan Correctional Facility for Women, should this appellant later be charged with assault, “a look back at his record would leave most anyone wondering why he was not screened out during the pre-employment process.”

In his cross exceptions, the appellant argues that the appointing authority’s “amended submission” should not be considered by the Commission because it was untimely filed in accordance with *N.J.A.C.* 4A:4-6.5.<sup>1</sup> The appellant indicates that the initial exceptions filed by the appointing authority and Dr. Guller referred to LSD use and a “Dr. Chece,” among other discrepancies. The appellant contends he has never used LSD and that Dr. Aylward was his evaluator. The appointing authority submitted amended exceptions after the ten day deadline. Further, the appellant argues that the exceptions prepared by Dr. Guller should not be considered because the IFP is not a party in this matter and does not have standing to file exceptions. Again, per *N.J.A.C.* 4A:4-6.5, only the appellant or the appointing authority have standing to submit exceptions. As for the behavioral record, the

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<sup>1</sup> *N.J.A.C.* 4A:4-6.5 states in pertinent part that exceptions should be filed by the parties within 10 days of receipt of the Panel’s report and recommendation and cross exceptions within 5 days. However, this agency granted an extension to the appointing authority to file its exceptions.

appellant argues that the Panel considered all of the charges, ordinances, and motor vehicle violations that were at issue as well as the appellant's presentation before the Panel prior to the issuance of its report and recommendation that the appellant was psychologically suitable to serve as a Correction Officer Recruit. The only ordinance violation not discussed was the ordinance for leaving bulk waste at the curb without a tag because it was not discussed in the IFP's evaluation of the appellant. Since the appointing authority has failed to meet its burden of proof in this matter, the appellant respectfully requests that the Commission adopt the report and recommendation of the Panel and restore him to the list.<sup>2</sup>

### CONCLUSION

Having considered the record and the Panel's Report and Recommendation issued thereon, and having made an independent evaluation of same, the Civil Service Commission (Commission) accepted and adopted the findings and conclusions as contained in the attached Report and Recommendation. It is noted that the Panel conducts an independent review of the raw data presented by the parties as well as the recommendations and conclusions drawn by the various evaluators prior to rendering its own conclusions and recommendations, which are based firmly on the totality of the record presented to it. The Commission notes that the original exceptions contain references to LSD use and Dr. Chece, among other discrepancies, and refer to another appellant altogether. Accordingly, the Commission accepts the corrected submission. The Commission further notes that the appellant had ample time to address the corrected submission in his cross exceptions.

The Commission agrees with the appellant's argument that Dr. Guller and IFP are not parties in this matter. Rather, in this case, IFP is the appointing authority's evaluator who conducted the initial psychological evaluation of the appellant and issued a report dated February 7, 2017 recommending the appellant be removed from the list. Although technically not a party to this appeal, it is not improper for an appointing authority to utilize its psychological expert to challenge the analysis and conclusions of other psychological experts. In this regard, while an appointing authority may certainly seek the advice and input of its evaluator when filing its exceptions, the Commission emphasizes that the responsibility to prepare and file exceptions rests solely with the appointing authority or its authorized legal representative.

In the instant situation, the February 7, 2017 report prepared by IFP has already been considered by the Panel. In its January 26, 2018 exceptions, the appointing authority's evaluator states that "a look back at his record would leave most anyone wondering why he was not screened out during the pre-employment

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<sup>2</sup> The appellant also submitted a December 12, 2017 letter of recommendation from Gene Cox, President, South Amboy First Aid and Safety Squad of which the appellant is a member.

process.” The Commission notes that, upon reviewing the appellant’s record and conducting a background investigation, the appointing authority had the opportunity to request his removal at that point, rather than extending a conditional offer of employment and subjecting the appellant to a psychological evaluation. Regardless, the Panel thoroughly reviewed IFP’s February 7, 2017 report and that of Dr. Aylward and questioned the appellant at its meeting on December 15, 2017 prior to arriving at its conclusions. The Commission does not believe that an undisclosed citation for leaving bulk garbage on the curb without a tag rises to the level of rendering the appellant psychologically unsuitable for serving as a Correction Officer Recruit. Moreover, as noted earlier, the appointing authority had the opportunity to request removal of his name from the list because of its background investigation (*i.e.*, the asserted falsification, driving infractions, and various adverse contacts with law enforcement), prior to subjecting him to a psychological examination. Further, the Commission is mindful that any potential behavioral or performance issues regarding the appellant’s continued employment can be addressed during the working test period.

Accordingly, after reviewing the findings of both Dr. Gallegos and Dr. Aylward, and the appellant’s behavioral history, the Commission finds that the exceptions do not persuasively dispute the findings of the Panel, which are based on the Panel’s own review of the results of all of the tests administered to the appellant by all of the evaluators, including a review of all of the raw data. The Commission notes that the Panel’s observations regarding the appellant’s appearance before the Panel and its conclusions regarding the raw data and reports it reviewed in this matter, are based on its expertise in the fields of psychology and psychiatry, as well as its experience in evaluating hundreds of appellants for law enforcement and public safety positions. Therefore, having considered the record and the Panel’s Report and Recommendation issued thereon, and having made an independent evaluation of same, the Civil Service Commission accepted and adopts the findings and conclusions as contained in the attached Panel’s Report and Recommendation.

### **ORDER**

The Civil Service Commission finds that the appointing authority has not met its burden of proof that K.W. is psychologically unfit to perform effectively the duties of a Correction Officer Recruit and, therefore, the Commission orders that his name be restored to the subject eligible list. Absent any disqualification issue ascertained through an updated background check conducted after a conditional offer of appointment, the appellant’s appointment is otherwise mandated. A federal law, the Americans With Disabilities Act (ADA), 42 U.S.C.A. §12112(d)(3), expressly requires that a job offer be made before any individual is required to submit to a medical or psychological examination. *See also* the Equal Employment Opportunity Commission’s *ADA Enforcement Guidelines: Preemployment Disability Related Questions and Medical Examination* (October 10, 1995). That offer having been

made, it is clear that, absent the erroneous disqualification, the aggrieved individual would have been employed in the position.

Since the appointing authority has not supported its burden of proof, upon the successful completion of his working test period, the Commission orders that appellant be granted a retroactive date of appointment to the date he would have been appointed if his name had not been removed from the subject eligible list. This date is for salary step placement and seniority-based purposes only. However, the Commission does not grant any other relief, such as back pay or counsel fees, except the relief enumerated above.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 20TH DAY OF JUNE, 2018



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Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence:

Christopher S. Myers  
Director  
Division of Appeals  
and Regulatory Affairs  
Civil Service Commission  
Written Record Appeals Unit  
P.O. Box 312  
Trenton, New Jersey 08625-0312

Attachment

c: K.W.  
Robert K. Chewning, Esq.  
Veronica Tingle  
Kelly Glenn